

ESI.22074

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**BRENTON WAKEFIELD,**  
**Plaintiff,**

**vs.**

**GLORIA AVILA AND ACE**  
**AMERICAN INSURANCE COMPANY**  
**Defendants.**

§  
§  
§  
§  
§  
§  
§

Civil Action No.

**INDEX OF MATTERS BEING FILED**

Pursuant to 28 U.S.C. § 1446(a) and S.D. TEX. LOC. R. 81, the following items are being filed with this Notice of Removal:

- A. A copy of the Docket Sheet from the 135<sup>th</sup> Judicial District Court of Victoria County, Texas in Cause No. 14-06-76474-B.
  - A-1. Plaintiff's Original Petition, filed June 5, 2014;
  - A-2. Citation issued, dated June 5, 2015;
  - A-3. Defendant ACE American Insurance Company's Motion to Transfer Venue and Original Answer Subject Thereto, filed July 8, 2014;
  - A-4. Plaintiff's First Amended Original Petition, dated August 12, 2014; and
  - A-5. Plaintiff's Notice of Partial Nonsuit, filed May 29, 2015.
- B. A list of all counsel of record in state court, including addresses, telephone numbers, and parties represented.

# Exhibit A

## VICTORIA COUNTY DISTRICT COURT

**CASE SUMMARY**

CASE NO. 14-06-76474-B

Brenton Wakefield

vs.

Gloria Avila and Ace American Insurance Company

§  
§  
§  
§

Location: 135th Judicial District Court

Judicial Officer: Williams, Stephen

Filed on: 06/05/2014

## CASE INFORMATION

Case Type: Motor Vehicle

Case Flags: Jury Fee Paid

## DATE

## CASE ASSIGNMENT

## Current Case Assignment

Case Number 14-06-76474-B  
 Court 135th Judicial District Court  
 Date Assigned 06/05/2014  
 Judicial Officer Williams, Stephen

## PARTY INFORMATION

Plaintiff

Wakefield, Brenton

Lead Attorneys

Crane, Mike

Retained

361-575-6764(W)

Defendant

Ace American Insurance Company

Arias, Fernando P

Retained

214-987-9600(W)

Avila, Gloria

Snodgrass, Theresa C.



Retained

713-354-4510(W)

## DATE

## EVENTS &amp; ORDERS OF THE COURT

## INDEX

06/05/2014  Original Petition (Opens Case)06/05/2014  Citation by Certified Mail  
Gloria Avila06/05/2014 Citation by Certified Mail  
Avila, Gloria  
Served: 06/10/201406/05/2014  Citation by Certified Mail  
Ace American Insurance06/05/2014 Citation by Certified Mail  
Ace American Insurance Company  
Served: 06/10/201406/05/2014  Copy  
file copy 2 citations by cert mail

06/05/2014 Jury Fee Paid (No Document)






07/01/2014  Answer

VICTORIA COUNTY DISTRICT COURT

**CASE SUMMARY**


















**CASE NO. 14-06-76474-B**

*DEFENDANT'S ORIGINAL ANSWER AND SPECIAL EXCEPTIONS (INCLUDING JURY DEMAND)*

07/01/2014	 Certificate Of Written Discovery
07/01/2014	Jury Fee Paid (No Document)
07/08/2014	 Motion to Transfer <i>and Original Answer</i>
08/04/2014	 Proposed Order <i>proposed Order Granting Defendant's Special Exceptions</i>
08/05/2014	 Rule <i>11 Agreement</i>
08/11/2014	 Order <i>Order Granting Defendant's Special Exception</i>
08/13/2014	 Plaintiff's First Amended Original Petition
08/26/2014	 Notice <i>Defendant's, Gloria O. Avila, Attorney's Notice of Change of Address</i>
08/26/2014	 Letter <i>Clerk Filing Letter</i>
09/05/2014	 Certificate Of Written Discovery
09/22/2014	 Certificate Of Written Discovery
09/22/2014	 Letter <i>Clerk Filing Letter</i>
09/24/2014	 Designation <i>Designation of Attorney in Charge</i>
09/25/2014	 Rule <i>11 Agreement</i>
11/14/2014	 Taxable Cost Certificate <i>(15)</i>
12/30/2014	 Taxable Cost Certificate <i>(9)</i>
12/31/2014	 Suggestion <i>Suggestion of Defendant's Death</i>
01/15/2015	 Rule <i>RULE 11 SETTLEMENT AGREEMENT</i>




VICTORIA COUNTY DISTRICT COURT

**CASE SUMMARY**  
**CASE NO. 14-06-76474-B**

01/16/2015	 Taxable Cost Certificate (11)
02/11/2015	 Taxable Cost Certificate (7)
02/18/2015	 Taxable Cost Certificate
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
03/23/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
04/16/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
04/16/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
04/16/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
04/16/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
05/19/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
05/19/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
05/19/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
05/19/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>

## VICTORIA COUNTY DISTRICT COURT

**CASE SUMMARY****CASE NO. 14-06-76474-B**

05/19/2015	 Taxable Cost Certificate <i>Rule 203 Certification of Written Deposition</i>
05/29/2015	 Notice <i>PLAINTIFF'S NOTICE OF PARTIAL NONSUIT</i>
05/29/2015	 Proposed Order <i>ORDER (PARTIAL NONSUIT) (to Jackie)</i>

**DATE****FINANCIAL INFORMATION****Defendant** Avila, Gloria

Total Charges

30.00

Total Payments and Credits

30.00

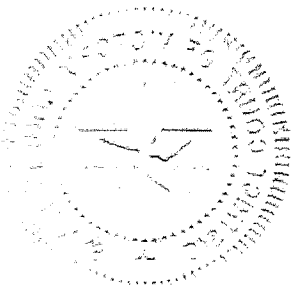
**Balance Due as of 6/3/2015****0.00****Plaintiff** Wakefield, Brenton

Total Charges

456.00

Total Payments and Credits

456.00

**Balance Due as of 6/3/2015****0.00**

# **Exhibit A/3**

CAUSE NO. 14-0676474-B

BRENTON WAKEFIELD	§	IN THE DISTRICT COURT OF
	§	
VS.	§	VICTORIA COUNTY, TEXAS
	§	
GLORIA AVILA AND ACE	§	
AMERICAN INSURANCE COMPANY	§	<u>135<sup>th</sup></u> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, **BRENTON WAKEFIELD**, hereinafter referred to as Plaintiff, and makes and files herewith his Original Petition, complaining of **GLORIA AVILA** and **ACE AMERICAN INSURANCE COMPANY**, hereinafter referred to as Defendants, and for cause of action would respectfully show to the Court as follows:

**I.**

Discovery is intended to be conducted under Level 3 of Texas Rules of Civil Procedure 190.

**II.**

Plaintiff, **BRENTON WAKEFIELD**, is a resident of Victoria, Victoria County, Texas.

Defendant, **GLORIA AVILA**, an individual who is a resident of Harris County, Texas, may be served with process at 9703 Ravensworth, Houston, Texas 77031 by certified mail, return receipt requested, restricted delivery.

Defendant, **ACE AMERICAN INSURANCE COMPANY**, a foreign insurance carrier, organized and existing under the laws of Pennsylvania and authorized to conduct insurance business in Texas, may be served with process by serving its designated agent for service of



process, C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136 by certified mail, return receipt requested, restricted delivery.

**III.**

This court has jurisdiction over this case and the damages sought are within the jurisdictional limits of this court. Venue is proper in Victoria County, Texas, because the policy of insurance written by Defendant **ACE AMERICAN INSURANCE COMPANY** to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc., the owners of the truck tractor trailer being driven by Plaintiff **BRENTON WAKEFIELD** at the time of the accident made the basis of this suit, was purchased and written in Victoria County, Texas.

**IV.**

On or about February 28, 2013, Defendant, **GLORIA AVILA**, was the driver of a vehicle which was travelling southbound on the 5200 block of South US 59 in Houston, Harris County, Texas. Plaintiff, **BRENTON WAKEFIELD**, who was driving a truck tractor trailer owned by Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc., was also travelling southbound on the 5200 block of South US 596 in Houston, Harris County, Texas when Defendant **GLORIA AVILA** failed to keep a proper lookout and failed to drive in a single lane of traffic striking the front of Plaintiff's vehicle. As a result of the accident Plaintiff has suffered personal injuries and damages.

**V.**

The injuries and damages suffered by Plaintiff were directly and proximately caused by the negligence of the Defendant, **GLORIA AVILA**. At the time and place in question, Defendant

was guilty of many acts of negligence, each of which jointly and severally proximately caused the serious, painful and permanent injuries and damages suffered by Plaintiff.

**VI.**

The motor vehicle causing the Plaintiff's, **BRENTON WAKEFIELD**, damages as described above was at all times material to this action an "underinsured motor vehicle", as that term is defined in the policy of insurance issued to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc. by Defendant **ACE AMERICAN INSURANCE COMPANY**. In this connection, Plaintiff, **BRENTON WAKEFIELD**, will show that the sum of the limits on all applicable liability bonds and policies providing liability insurance for the ownership, maintenance, or use of such vehicle is less than the applicable limits of liability stated in the underinsured coverage of the policy issued to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc. by Defendant **ACE AMERICAN INSURANCE COMPANY**. Specifically, the only available insurance coverage for **GLORIA AVILA** is \$30,055.00, pursuant to a policy issued by Progressive County Mutual Insurance Company to **GLORIA AVILA**. Plaintiff, **BRENTON WAKEFIELD**, has fully complied with all terms of the policy as a condition precedent to bringing this suit. Nevertheless, Defendant, **ACE AMERICAN INSURANCE COMPANY**, has failed and refused, and still fails and refuses, to pay Plaintiff, **BRENTON WAKEFIELD**, any benefits under this policy as it is contractually required to do.

**VII.**

In the accident made the basis of this suit the Plaintiff **BRENTON WAKEFIELD** suffered injuries to his back, neck and body generally. Plaintiff further suffered injury to his nervous system. Said Plaintiff's injuries and the effects thereof have caused him to suffer physical pain and

mental anguish and in all reasonable probability will continue to suffer from such physical pain and mental anguish for a long time in the future. Plaintiff also suffered loss of wages and wage earning capacity, both past and future. At the time of the accident made the basis of this suit, said Plaintiff was a healthy male, of the age of 49 years, and under the United States Life Table for 2006, had a life expectancy of 29.6 years, and work life expectancy of 13.4 years. That such physical activities as said Plaintiff has been able to participate in, and will be able to participate in in the future, have been and will be participated in with great discomfort and inconvenience as the result of the injuries received by said Plaintiff in the accident made the basis of this suit. Plaintiff has further suffered bodily impairment and disfigurement, both past and future, and such conditions are permanent. That as a result of the injuries received in said accident, said Plaintiff has been required to incur medical and hospital expenses in the past and will, in all reasonable probability, be required to incur medical and hospital expenses in the future and that such medical and hospital expenses as have been, and will be incurred, were and will be reasonable and necessary for the treatment of the injuries received by said Plaintiff and the charges made for such services were and will be the usual and customary charges for the services in the vicinity where the services were and will be performed and furnished. That by reason of all the above and foregoing matters, said Plaintiff has been damaged in an amount of which is in excess of the minimum jurisdictional amount of this Court for which amount the Plaintiff now sues and prays the judgment of this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final hearing Plaintiff have judgment against the Defendants for damages with pre-judgment and post-judgment interest thereon, for costs of suit,



attorney's fees, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

**LAW OFFICE OF MIKE CRANE**

209 W. Juan Linn

P.O. Box 2206

Victoria, Texas 77902-2206

(361) 575-6764 - Telephone

(361) 575-8454 - Facsimile

BY: 

MIKE CRANE

State Bar No. 05006700

**ATTORNEY FOR PLAINTIFF,**

**BRENTON WAKEFIELD**

**PLAINTIFF RESPECTFULLY DEMANDS A TRIAL BY JURY**

# **Exhibit A/4**

CLERK OF THE COURT

Cathy Stuart  
P. O. Box 2238  
Victoria, Texas 77902

ATTORNEY REQUESTING ISSUANCE

Mike Crane  
209 W. Juan Linn  
Victoria, Texas 77901

THE STATE OF TEXAS  
CITATION

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

**TO: ACE AMERICAN INSURANCE COMPANY, MAY BE SERVED WITH PROCESS BY SERVING ITS DESIGNATED AGENT FOR SERVICE OF PROCESS, C. T. CORPORATION SYSTEM AT 1999 BRYAN STREET, SUITE 900, DALLAS, TEXAS 75201-3136 BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, RESTRICTED DELIVERY,**

You are commanded to appear by filing a written answer to the Plaintiff's Original Petition before 10 o'clock A.M. of the Monday next after the expiration of twenty days after the date of service hereof, before the Honorable 135th Judicial District Court of Victoria County, Texas, at the Courthouse of said County in Victoria, Texas.

Said Plaintiff's petition was filed in said Court, on the 5th day of June, 2014 in this case numbered **14-06-76474-B** on the docket of said court, and styled,

BRENTON WAKEFIELD

VS.

GLORIA AVILA AND ACE AMERICAN INSURANCE COMPANY

The nature of Plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Victoria, Texas, this the 5th day of June, 2014.



CATHY STUART  
District Clerk  
Victoria County, Texas

By: *Chia Elizondo*

Deputy

Rule 106: "--the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

Cause #14-06-76474-B

135th Judicial District Court

BRENTON WAKEFIELD VS. GLORIA AVILA AND ACE AMERICAN INSURANCE COMPANY

Address for service: ACE AMERICAN INSURANCE COMPANY, DESIGNATED AGENT FOR SERVICE, C. T. CORPORATION SYSTEM, 1999 BRYAN STREET, SUITE 900, DALLAS, TEXAS 75201-3136

## OFFICER'S OR AUTHORIZED PERSON'S RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_\_ o'clock \_\_\_\_\_ M. and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon, together with the accompanying copy of the petitioner's petition, the following times and places, to wit:

Name	Date	Time	Place, Course and Distance from Courthouse

And not executed as to the defendant(s) \_\_\_\_\_  
the diligence used in finding said defendant(s) being: \_\_\_\_\_  
and the cause of failure to execute this process is: \_\_\_\_\_  
can the information received as to the whereabouts of said defendant(s) being: \_\_\_\_\_

FEES - - Serving \$ \_\_\_\_\_, Sheriff  
\_\_\_\_\_, County, Texas  
By: \_\_\_\_\_ Deputy

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is \_\_\_\_\_ (First, Middle, Last), my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_ (Street, City, Zip).

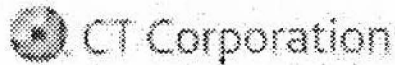
I DECLARE UNDER PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(ID # and Expiration of certification)





**Service of Process  
Transmittal**

06/10/2014

CT Log Number 525116840

**TO:** Saverio Rocca, Corporate Counsel  
ACE Group  
436 Walnut Street, 2nd Floor WA02C  
Philadelphia, PA 19106

**RE: Process Served in Texas**

**FOR:** ACE American Insurance Company (Domestic State: PA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Brenton Wakefield, Pltf. vs. Gloria Avila and ACE American Insurance Company, Dfts.

**DOCUMENT(S) SERVED:** Citation, Order, Original Petition

**COURT/AGENCY:** 135th Judicial District Court Calhoun County, TX  
Case # 140676474B

**NATURE OF ACTION:** Insurance Litigation - Claim for policy benefits

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Certified Mail on 06/10/2014 postmarked: "Not Post Marked"

**JURISDICTION SERVED:** Texas

**APPEARANCE OR ANSWER DUE:** Before 10:00 a.m. on the Monday next following the expiration of 20 days after the date of service

**ATTORNEY(S) / SENDER(S):** Mike Crane  
209 W. Juan Linn  
Victoria, TX 77901

**ACTION ITEMS:** CT has retained the current log, Retain Date: 06/11/2014, Expected Purge Date: 06/16/2014  
Image SOP  
Email Notification, Adrienne Logan ADRIENNE.LOGAN@acegroup.com  
Email Notification, Marie Morrill marie.morrill@acegroup.com  
Email Notification, Pamela Martin pamela.martin@acegroup.com  
Email Notification, Angela Jay angela.jay@acegroup.com  
Email Notification, Darlene Schneider darlene.schneider@acegroup.com

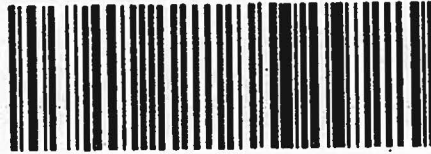
**SIGNED:** C T Corporation System  
**PER:** Beatrice Casarez-Barrientez  
**ADDRESS:** 1999 Bryan Street  
Suite 900  
Dallas, TX 75201  
**TELEPHONE:** 214-932-3601



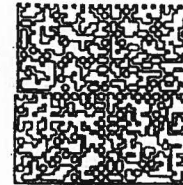
CATHY STUART  
DISTRICT CLERK  
P. O. BOX 2238  
VICTORIA, TEXAS 77902



**CERTIFIED MAIL**



7013 2630 0001 3760 5286



usps.com

049J82055579

**\$ 11.740**

06/06/2014

Mailed From 77901  
**US POSTAGE**

**RESTRICTED DELIVERY**

ACE AMERICAN INSURANCE COMPANY  
C/O C. T. CORPORATION SYSTEM,  
DESIGNATED AGENT  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136

# **Exhibit A /5**

ESL22074

CAUSE NO. 14-06-76474-B

BRENTON WAKEFIELD,  
Plaintiff,

VS.

GLORIA AVILA AND ACE  
AMERICAN INSURANCE COMPANY,  
Defendants.

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT  
VICTORIA COUNTY, TEXAS  
135TH JUDICIAL DISTRICT

FILED  
14 JUL -8 AM 9:02  
Cathy Smith  
DISTRICT CLERK  
VICTORIA COUNTY, TEXAS

**DEFENDANT ACE AMERICAN INSURANCE COMPANY'S MOTION TO  
TRANSFER VENUE AND ORIGINAL ANSWER SUBJECT THERETO**

**TO THE HONORABLE JUDGE OF SAID COURT:**

ACE AMERICAN INSURANCE COMPANY ("ACE"), a Defendant in the above entitled and numbered cause, makes this Motion to Transfer Venue and its Original Answer Subject to Motion to Transfer Venue, and for same would respectfully show unto the Court as follows:

I.

**MOTION TO TRANSFER VENUE**

Defendant expressly objects to venue in Victoria County, the county in which this action was commenced, on the grounds that venue in Victoria County is not proper and no basis exists mandating or permitting venue in Victoria County, Texas. Victoria County is not a county of proper venue because: (1) ACE, a foreign corporation, does not reside in or maintain its principal office in this state in Victoria County; (2) Defendant Gloria Avila, an individual, does not reside in Victoria County, Texas; (3) Victoria County is not the county in which all or a substantial part of the events or omissions giving rise to the claim in this lawsuit occurred; and (4) no mandatory

or permissive exception to the general venue statute authorizes the maintenance of this action in Victoria County.

More specifically, Plaintiff has failed to plead sufficient venue facts that would fix venue in Victoria County pursuant to §1952.110 of the TEXAS INSURANCE CODE because Plaintiff's underinsured motorist claims against ACE are not ripe, Victoria County is not the county in which "the policyholder or beneficiary instituting the action resided at the time of the accident involving the uninsured or underinsured motor vehicle," and §1952.110 otherwise provides that "an action against an insurer in relation to [UM/UIM] coverage may be brought only in the county in which the accident occurred." The incident made the basis of the instant lawsuit occurred in Harris County, Texas. Therefore Defendant requests a transfer to Harris County.

II.

Pursuant to §15.002(a) of the TEXAS CIVIL PRACTICE & REMEDIES CODE, all lawsuits shall be brought:

- (1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (2) in the county of defendant's residence at the time the cause of action accrued if defendant is a natural person; or
- (3) in the county of the defendant's principal office in this state, if the defendant is not a natural person.

ACE specifically avers that Victoria County is not the county in which all or a substantial part of the events or omissions giving rise to the claim in question occurred, that ACE is not a resident of Victoria County, and that ACE's principal office in this state is not in Victoria County. Accordingly, venue is not proper in Victoria County.

III.

ACE specifically denies the venue facts plead in Plaintiff's Original Petition, paragraph III. More specifically, ACE denies that "[v]enue is proper in Victoria County, Texas, because the policy of insurance written by Defendant ACE to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc., the owner of the truck tractor trailer being driven by Plaintiff Brandon Wakefield at the time of the accident made the basis of this suit, was purchased and written in Victoria County, Texas."

IV.

ACE requests that this action be transferred to a District Court of Harris County, Texas, where proper venue lies in this cause. ACE avers that venue is proper in Harris County, Texas for the reason that the accident made the basis of the instant lawsuit occurred in Harris County, Texas and all or a substantial part of the events or omissions giving rise to the Plaintiff's alleged injuries and damages occurred in Harris County, Texas. TEX. INS. CODE ANN. §1952.110(2); TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1).

V.

Alternatively, ACE requests that this action be transferred to a District Court of Harris County, Texas, where proper venue lies, pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002(a)(2), because Harris County, Texas is the county in which Defendant Gloria Avila resides.

**WHEREFORE, PREMISES CONSIDERED, ACE AMERICAN INSURANCE COMPANY** requests that this Motion to Transfer Venue be set for hearing, and that upon completion of the hearing, the Court grant ACE's Motion to Transfer Venue in all things and transfer this cause to a District Court of Harris County, Texas, taxing costs incurred herein

against Plaintiff, and that ACE have such other and further relief to which it may be justly entitled.

VI.

**ORIGINAL ANSWER SUBJECT TO MOTION TO TRANSFER VENUE**

ACE AMERICAN INSURANCE COMPANY ("ACE"), a Defendant herein, subject to its Motion to Transfer Venue, files this its Original Answer to Plaintiff's Original Petition, and by way of answer shows:

VII.

ACE generally denies each and every, all and singular, the material allegations contained within *Plaintiff's Original Petition*, and any amendments thereto, and demands strict proof thereof.

VIII.

For further answer, ACE hereby gives notice pursuant to TEX. R. CIV. P. 193.7 of its intent to utilize any and all items produced in discovery, and that all such items are self-authenticated.

IV.

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, ACE hereby demands a trial by jury. Simultaneously with the filing of this demand, a jury fee is being paid on behalf of this Defendant.

**WHEREFORE, PREMISES CONSIDERED,** Defendant ACE AMERICAN INSURANCE COMPANY prays that the Plaintiff take nothing by this suit, that Defendant go hence with its costs without day, and for such other and further relief, both general and special, at law and in equity, to which Defendant may show itself justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY, SHIPMAN  
& SALINAS, L.L.P.**

BY: 

**DOUGLAS D. FLETCHER**

State Bar No. 07139500

Email: [doug.fletcher@fletcherfarley.com](mailto:doug.fletcher@fletcherfarley.com)

9201 N. Central Expressway, Suite 600

Dallas, Texas 75231

(214) 987-9600 (office)

(214) 987-9866 (telecopier)

**ATTORNEYS FOR DEFENDANT ACE  
AMERICAN INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been mailed, telecopied or hand delivered to all attorneys of record, in compliance with Rule 21a. of the Texas Rules of Civil Procedure, on this the 3rd day of July, 2014.



**DOUGLAS D. FLETCHER**

# **Exhibit A /6**



**CAUSE NO. 14-06-76474-B**

<b>BRENTON WAKEFIELD</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>VS.</b>	§	<b>VICTORIA COUNTY, TEXAS</b>
	§	
<b>GLORIA AVILA AND ACE</b>	§	
<b>AMERICAN INSURANCE COMPANY</b>	§	<b>135TH JUDICIAL DISTRICT</b>

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, **BRENTON WAKEFIELD**, hereinafter referred to as Plaintiff, and makes and files herewith his First Amended Original Petition, complaining of **GLORIA AVILA** and **ACE AMERICAN INSURANCE COMPANY**, hereinafter referred to as Defendants, and for cause of action would respectfully show to the Court as follows:

**I.**

Discovery is intended to be conducted under Level 3 of Texas Rules of Civil Procedure 190.

**II.**

Plaintiff, **BRENTON WAKEFIELD**, is a resident of Victoria, Victoria County, Texas. The last three digits of Plaintiff's driver's license number are 330. The last three digits of Plaintiff's Social Security number are 972.

Defendant, **GLORIA AVILA**, an individual who is a resident of Harris County, Texas, may be served with process at 9703 Ravensworth, Houston, Texas 77031 by certified mail, return receipt requested, restricted delivery. No service is necessary at this time.

Defendant, **ACE AMERICAN INSURANCE COMPANY**, a foreign insurance carrier, organized and existing under the laws of Pennsylvania and authorized to conduct insurance

business in Texas, may be served with process by serving its designated agent for service of process, C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136 by certified mail, return receipt requested, restricted delivery. No service is necessary at this time.

### III.

This court has jurisdiction over this case and the damages sought are within the jurisdictional limits of this court. Venue is proper in Victoria County, Texas, because the policy of insurance written by Defendant **ACE AMERICAN INSURANCE COMPANY** to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc., the owners of the truck tractor trailer being driven by Plaintiff **BRENTON WAKEFIELD** at the time of the accident made the basis of this suit, was purchased and written in Victoria County, Texas.

### IV.

On or about February 28, 2013, Defendant, **GLORIA AVILA**, was the driver of a vehicle which was travelling southbound on the 5200 block of South US 59 in Houston, Harris County, Texas. Plaintiff, **BRENTON WAKEFIELD**, who was driving a truck tractor trailer owned by Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc., was also travelling southbound on the 5200 block of South US 596 in Houston, Harris County, Texas when Defendant **GLORIA AVILA** failed to keep a proper lookout and failed to drive in a single lane of traffic striking the front of Plaintiff's vehicle. As a result of the accident Plaintiff has suffered personal injuries and damages.

### V.

The injuries and damages suffered by Plaintiff were directly and proximately caused by the negligence of the Defendant, **GLORIA AVILA**. At the time and place in question, Defendant

was guilty of many acts of negligence, each of which jointly and severally proximately caused the serious, painful and permanent injuries and damages suffered by Plaintiff.

## VI.

The motor vehicle causing the Plaintiff's, **BRENTON WAKEFIELD**, damages as described above was at all times material to this action an "underinsured motor vehicle", as that term is defined in the policy of insurance issued to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc. by Defendant **ACE AMERICAN INSURANCE COMPANY**. In this connection, Plaintiff, **BRENTON WAKEFIELD**, will show that the sum of the limits on all applicable liability bonds and policies providing liability insurance for the ownership, maintenance, or use of such vehicle is less than the applicable limits of liability stated in the underinsured coverage of the policy issued to Carbon Silica Partners, LP and/or Carbon Silica Real Estate, LP and/or Diamond Fiberglass Fabricators, Inc. by Defendant **ACE AMERICAN INSURANCE COMPANY**. Specifically, the only available insurance coverage for **GLORIA AVILA** is \$30,055.00, pursuant to a policy issued by Progressive County Mutual Insurance Company to **GLORIA AVILA**. Plaintiff, **BRENTON WAKEFIELD**, has fully complied with all terms of the policy as a condition precedent to bringing this suit. Nevertheless, Defendant, **ACE AMERICAN INSURANCE COMPANY**, has failed and refused, and still fails and refuses, to pay Plaintiff, **BRENTON WAKEFIELD**, any benefits under this policy as it is contractually required to do.

## VII.

In the accident made the basis of this suit the Plaintiff **BRENTON WAKEFIELD** suffered injuries to his back, neck and body generally. Plaintiff further suffered injury to his nervous system. Said Plaintiff's injuries and the effects thereof have caused him to suffer physical pain and

mental anguish and in all reasonable probability will continue to suffer from such physical pain and mental anguish for a long time in the future. Plaintiff also suffered loss of wages and wage earning capacity, both past and future. At the time of the accident made the basis of this suit, said Plaintiff was a healthy male, of the age of 49 years, and under the United States Life Table for 2006, had a life expectancy of 29.6 years, and work life expectancy of 13.4 years. That such physical activities as said Plaintiff has been able to participate in, and will be able to participate in in the future, have been and will be participated in with great discomfort and inconvenience as the result of the injuries received by said Plaintiff in the accident made the basis of this suit. Plaintiff has further suffered bodily impairment and disfigurement, both past and future, and such conditions are permanent. That as a result of the injuries received in said accident, said Plaintiff has been required to incur medical and hospital expenses in the past and will, in all reasonable probability, be required to incur medical and hospital expenses in the future and that such medical and hospital expenses as have been, and will be incurred, were and will be reasonable and necessary for the treatment of the injuries received by said Plaintiff and the charges made for such services were and will be the usual and customary charges for the services in the vicinity where the services were and will be performed and furnished. That by reason of all the above and foregoing matters, said Plaintiff has been damaged in an amount of Two Million Five Hundred Thousand and No/100 (\$2,500,000.00) Dollars for which amount the Plaintiff now sues and prays the judgment of this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final hearing Plaintiff have judgment against the Defendants for damages with pre-judgment and post-judgment interest thereon, for costs of suit,

attorney's fees, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

**LAW OFFICE OF MIKE CRANE**

209 W. Juan Linn

P.O. Box 2206

Victoria, Texas 77902-2206

(361) 575-6764 - Telephone

(361) 575-8454 - Facsimile

BY: 

MIKE CRANE

State Bar No. 05006700

**ATTORNEY FOR PLAINTIFF,**

**BRENTON WAKEFIELD**

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the foregoing document has been served upon all counsel of record as listed below, by method of service indicated, on this the 12th day of August, 2014.

Ms. Theresa C. Snodgrass *by* **CERTIFIED MAIL/7013 2630 0001 3754 1232/R.R.R.**

MEYNIER & MATTE

Brookhollow Central III

2950 North Loop West, Suite 350

Houston, Texas 77092

Mr. Douglas D. Fletcher *by* **CERTIFIED MAIL/7013 2630 0001 3754 1225/R.R.R.**

FLETCHER, FARLEY, SHIPMAN & SALINAS, L.L.P.

9201 N. Central Expressway, Suite 600

Dallas, Texas 75231



MIKE CRANE

# **Exhibit A /7**

**CAUSE NO. 14-06-76474-B**

<b>BRENTON WAKEFIELD</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>V.</b>	§	<b>135TH JUDICIAL DISTRICT OF</b>
	§	
<b>GLORIA AVILA AND ACE</b>	§	<b>VICTORIA COUNTY, TEXAS</b>
<b>AMERICAN INSURANCE</b>	§	
<b>COMPANY</b>	§	

**PLAINTIFF'S NOTICE OF PARTIAL NONSUIT**

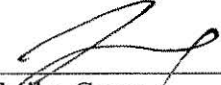
TO THE HONORABLE JUDGE OF SAID COURT:

Please be advised that Plaintiff, BRENTON WAKEFIELD, hereinafter referred to as Plaintiff, hereby takes a nonsuit of Plaintiff's claims against Defendant GLORIA O. AVILA, only, in the above-styled case, with prejudice to refile of same, pursuant to Rule 162 of the Texas Rules of Civil Procedure.

The docket clerk is requested to enter this notice into the minutes of the Court.

Respectfully submitted:

**LAW OFFICE OF MIKE CRANE**

By:   
Mike Crane  
State Bar No. 05006700  
P.O. Box 2206  
Victoria, Texas 77902-2206  
(361) 575-6764 – Telephone  
(361) 575-8454 - Facsimile

ATTORNEY FOR PLAINTIFF,  
BRENTON WAKEFIELD

**CERTIFICATE OF SERVICE**

I, Theresa C. Snodgrass, do hereby certify that a true and correct copy of the above and foregoing has been served upon the opposing counsel and/or pro se parties by facsimile, hand delivery, or certified mail, and that a copy has been forwarded to all counsel and/or pro se parties of record in this cause, on this the 29<sup>th</sup> day of May 2015.

Fernando P. Arias  
Fletcher & Farley  
9201 North Central Expressway, Suite 600  
Dallas, TX 75231

Eservice &/or Facsimile (214) 987-9866

Mike Crane  
Law Office Of Mike Crane  
209 W. Juan Linn  
P.O. Box 2206  
Victoria, TX 77902-2206

Eservice &/or Facsimile (361) 575-8454



---

Theresa C. Snodgrass



# **Exhibit B**

ESI.22074

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**BRENTON WAKEFIELD,**  
**Plaintiff,**

**vs.**

**GLORIA AVILA AND ACE**  
**AMERICAN INSURANCE COMPANY**  
**Defendants.**

§  
§  
§  
§  
§  
§  
§

Civil Action No.

**LIST OF COUNSEL OF RECORD**

Pursuant to 28 U.S.C. § 1446(a) and S.D. TEX. LOC. R. 81, the following are the list of counsel of record in this matter:

<b><u>Plaintiff's attorneys:</u></b>	<b><u>Defendant's Attorneys:</u></b>
<p><b>Mike Crane</b> State Bar No. 05006700 lragdale@mikecranelaw.com</p> <p>LAW OFFICE OF MIKE CRANE P.O. Box 2206 Victoria, Texas 77902-2206</p> <p>(361) 575-6764 (361) 575-8454 [facsimile]</p>	<p><b>Fernando P. Arias</b> ATTORNEY IN CHARGE State Bar No. 24025946 Southern District Bar No. 596519 fred.arias@fletcherfarley.com</p> <p><b>Kenneth J. Lambert</b> State Bar No. 11843700 Southern District Bar No. 31523 ken.lambert@fletcherfarley.com</p> <p>FLETCHER, FARLEY, SHIPMAN &amp; SALINAS, LLP 9201 North Central Expressway, 6<sup>th</sup> Floor Dallas, Texas 75231 (214) 987-9600 (214) 987-9866</p>